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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Kareem Hargett, Plaintiff, vs. Wells Fargo Bank, N.A., Defendant.	Case No.: 2:15-cv-07671-MWF-JEM **JOINT RULE 26(F) REPORT** *Date: November 23, 2015* *Time: 11:00 AM* *Dept: Courtroom 1600* *Judge: Hon. Michael W. Fitzgerald* *Trial Date: None Set*

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, counsel for Plaintiff and Defendant hereby submit to the Court this Joint Rule 26(f) Report:

A. Statement of the Case:

Plaintiff:

This action arises out of Defendant's violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq*. ("TCPA"). Defendant called Plaintiff's cellular telephone on multiple occasions using an automatic telephone dialing system and/or an artificial or prerecorded voice. Around December 2014, Plaintiff demanded that Defendant cease calling his cellular telephone. Defendant continued to call Plaintiff's cellular telephone with prerecorded messages, despite Plaintiff's advisement and request that the calls cease.

Defendant:

This case ultimately comes down to Plaintiff's granting prior express consent to receive calls at his cell phone number concerning his home mortgage loan with Wells Fargo. Wells Fargo's records show that Plaintiff signed a customer contact disclosure form, specifically consenting to ATDS and/or pre-recorded/artificial voice contact in conjunction with his Wells Fargo home mortgage loan, and provided full loan-level consent to be contacted at his cell phone number. Although Plaintiff contends that he revoked consent to receive such calls circa December 2014, Wells Fargo has no record of revocation by Plaintiff at any time. As such, to the extent any calls were made in conjunction with Plaintiff's home mortgage loan account, those calls were made with Plaintiff's prior express consent, and were not in violation of the TCPA.

B. Subject Matter Jurisdiction:

Jurisdiction is appropriate pursuant to 47 U.S.C. § 227(b)(3) and 28 U.S.C. § 1331. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

C. Legal Issues:

a. Whether Defendant violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* ("TCPA");

b. Whether Defendant used an automatic telephone dialing system ("ATDS") when calling Plaintiff's cellular telephone;

c. Whether Defendant had Plaintiff's prior express consent to call his cellular telephone using an ATDS;

d. Whether Plaintiff revoked his consent to receive ATDS calls;

e. The total number of calls "made" within the meaning of the TCPA;

f. Whether Defendant's calls to Plaintiff were made in knowing and/or willful violation of the TCPA, such that the imposition of treble damages is warranted.

D. Parties, Evidence, etc.:

Plaintiff's response:

Plaintiff, Kareem Hargett, is a party to this case and is Plaintiff's key witness. Plaintiff plans to introduce into evidence the following, which will be produced during discovery: dialer reports, collection notes, call logs, and any recorded conversations.

Defendant's response:

In addition to the witnesses and evidence identified by Plaintiff above, Defendant will rely upon the testimony of one or more corporate representatives, and intends to introduce into evidence the following additional evidence, which will be produced during discovery: applicable account and loan servicing notes, and relevant portions of Plaintiff's loan file.

E. Damages:

Plaintiff is seeking statutory damages of $500.00 per violation and treble damages for each violation made in knowing and willful violation of the TCPA.

F. Insurance:

Plaintiff's response:

Plaintiff is unaware of any insurance coverage that would apply to this matter.

Defendant's response:

Defendant does not carry any insurance that would apply to this matter.

G. Motions:

The parties do not anticipate filing any motion to i) add another party or claim; ii) file an amended pleading; or iii) transfer venue. Defendant anticipates filing a motion for summary judgment and/or partial summary judgment.

H. Manual for Complex Litigation:

The parties agree that this case is not sufficiently complex to justify utilization of any of the procedures of the Manual for Complex Litigation. There do not appear to be any unusual legal issues presented at this time.

I. Status of Discovery:

The Parties will exchange initial disclosures pursuant to Federal Rule 26(a) by November 9, 2015.

Plaintiff's response:

Plaintiff anticipates serving written discovery (interrogatories, requests for production of documents, and requests for admissions) on Defendant.

Defendant's response:

Defendant likewise anticipates serving written discovery (interrogatories, requests for production of documents, and requests for admission) on Plaintiff. Defendant also intends to take Plaintiff's deposition. Defendant further reserves the right to take any other necessary third-party depositions and/or subpoena any necessary documents from third-parties based upon information disclosed by Plaintiff in the course of discovery.

J. Discovery Plan:

The Parties do not anticipate any changes in the Rule 26(a) disclosure requirements.

The parties do not believe that discovery should be conducted in phases or otherwise be limited.

The parties do not believe that the applicable limitations should be changed or other limitations imposed.

The parties do not believe that this Court should enter other orders at this time.

Plaintiff's response:

Plaintiff anticipates needing discovery regarding Defendant's communications with Plaintiff; the names of agents of Defendant that communicated with Plaintiff; Defendant's collection notes, call logs, dialer reports, and recordings of conversations regarding the debt at issue.

Plaintiff further anticipates needing discovery regarding Defendant's telephone systems and operating procedures for connecting calls, the number and duration of calls to Plaintiff, and whether consent existed to contact Plaintiff's phone number.

Defendant's response:

The issues upon which Defendant anticipates discovery will be conducted include, but are not limited to, the number and identification of calls at issue in this case, the purpose of such calls, any actions taken or statements made by Plaintiff in conjunction with such calls or any other communications between Plaintiff and Wells

Fargo regarding his mortgage loan account, including to the extent those communications constitute consent and/or revocation, and Plaintiff's damages alleged in this action, if any. Defendant reserves the right to conduct discovery on any other issues related to the subject-matter of this action, as needed.

K. Discovery Cut-off:

July 11, 2016

L. Expert Discovery:

Expert Disclosure (Initial) deadline: July 4, 2016

Expert Disclosure (Rebuttal) deadline: July 18, 2016

Expert Discovery cut-off date: August 8, 2016

M. Dispositive Motions:

Last day for the Court to hear dispositive motions: September 19, 2016

N. Settlement/Alternative Dispute Resolution(ADR):

The parties have conferred and discussed the case; however, no settlement demands or offers have been presented. The parties will continue to engage in informal settlement discussions. The parties suggest ADR Procedure No.2 pursuant to Local Rule 16-15.4.

O. Trial Estimate:

Plaintiff and Defendant have requested trial by jury. The parties estimate that the trial will last two (2) days.

Both parties anticipate calling no more than three (3) witnesses each.

P. Trial Counsel:

Trial Counsel for Plaintiff is Trinette G. Kent

Trial Counsel for Defendant are Eric J. Troutman and Alexandra N. Krasovec

Q. Independent Expert or Master:

N/A

R. Timetable:

See attached Exhibit A.

S. Other issues:

There are none at this time.

DATED: November 9, 2015

By: *__/s/ Alexandra N. Krasovec*
ALEXANDRA N. KRASOVEC
Attorneys for Defendant
Wells Fargo, N.A.

DATED: November 9, 2015

By: *___/s/ Trinette G. Kent________*
Trinette G. Kent, Esq,
Lemberg Law, LLC
Attorney for Plaintiff, Kareem Hargett